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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/912,264	07/24/2001	Jonathan Zittrain	111267.120	4128
23483	7590	07/21/2005	EXAMINER	
WILMER CUTLER PICKERING HALE AND DORR LLP			MULLEN, THOMAS J	
60 STATE STREET			ART UNIT	
BOSTON, MA 02109			PAPER NUMBER	
			2632	

DATE MAILED: 07/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/912,264

Applicant(s)

ZITTRAIN ET AL.

Examiner

Thomas J. Mullen, Jr.

Art Unit

2632

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 01 July 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☒ Newly proposed or amended claim(s) 25-35 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: 1-17 and 25-35.
Claim(s) objected to: _____.
Claim(s) rejected: 18-24.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☒ Other: See attached response to arguments.

RESPONSE TO ARGUMENTS

In the response filed 12/23/04, applicant further defined the claim 18 recitation, "a squeezed contraction to the bracelet" (by the wearer of the bracelet), by adding the phrase "that causes the bracelet to contract around and squeeze the wearer of the bracelet". It is considered that this further limitation can be interpreted in two ways--(1), that the sensor responds to the sensed "squeezed contraction" by automatically (i.e., electronically) causing or triggering some element within the same bracelet to further "contract (that bracelet) around and squeeze the wearer", or (2), that when a "squeezed contraction" to the bracelet occurs, such action inherently "causes" the same bracelet to "contract around" and "squeeze" the wearer. Regarding (1), there appears to be no support in the disclosure as filed for the sensor within a given bracelet to activate a further control function (i.e. further squeezing and/or contracting) with respect to that same bracelet, in response to the "initial" squeezing and/or contracting by the wearer of that bracelet. (Interpretation (1) is the basis for the "new matter" rejection in paragraph 4 of the final rejection.) Regarding (2), the added phrase "that causes the bracelet to contract around and squeeze the wearer of the bracelet" is clearly implied by the original phrase "a squeezed contraction to the bracelet" (in view of the way in which a "bracelet" is conventionally worn), and thus does not substantively further limit the scope of the claim so as to avoid the rejection under 35 U.S.C. 103 based on Cataldo in view of LaWhite et al or Levinson et al. In other words, based only on what would be supported by the original disclosure (which eliminates interpretation (1) above), applicant has not overcome the 103 rejection, since under interpretation (2) the added phrase does not add any apparent further limitations to the claim. Thus, where Cataldo in view of either LaWhite et al or Levinson et al collectively teaches or suggests (i.e., renders obvious) a "bracelet" worn by a wearer, the bracelet having a sensor for sensing a "squeezed contraction" to the bracelet by the wearer (see paragraph 6 in the final rejection), it is clearly implied and inherent that a squeezed contraction to the bracelet worn by a wearer "causes the bracelet to contract around and squeeze the wearer", as claimed.

Applicant's arguments in the response filed 7/1/05 discuss the "mated" concept of multiple bracelets, wherein a change in one bracelet (e.g. squeezing and/or contraction) is communicated to and duplicated in the other bracelet(s). However, changes in the other (i.e. "recipient") bracelet(s) do not appear to be relevant to what is presently recited in claim 18; note

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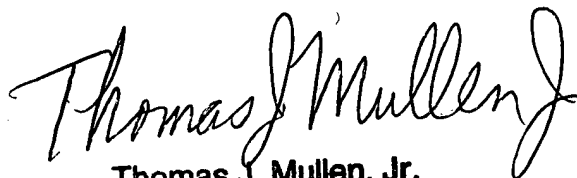
that claim 18 does not even mention a second, or "other", bracelet. Thus, this line of reasoning is not understood.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas J. Mullen, Jr. whose telephone number is 571-272-2965. The examiner can normally be reached on Monday-Thursday from 6:30 AM to 4 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel Wu, can be reached on (571) 272-2964. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 571-272-2600.

TJM

A handwritten signature in black ink, reading "Thomas J. Mullen, Jr." in a cursive style.

Thomas J. Mullen, Jr.
Primary Examiner
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